

REMARKS

The Applicant appreciates the courteous and complete examination of the application by the Examiner. In view of the foregoing amendments and the following remarks, a reconsideration of the instant application is respectfully requested.

The Examiner imposes an election/restriction to claims 1-8 and 48-54, 55-64, 65-69, 70-74, 75, 76, 77-79, 80, 81, 82, and 83 as they do not relate to a single general inventive concept under PCT Rule 13.1.

The Applicant believes that the Examiner is in error in restricting claims 75-83 since they were withdrawn from prosecution in an amendment dated April 25, 2006.

PROVISIONAL ELECTION OF CLAIMS WITH TRAVERSE UNDER 37 CFR 1.143

The Applicant provisionally elects claims 1, 2, 8 and 50 with traverse, and withdraws claims 3-7, 48, 49, and 51-83 without prejudice or disclaimer of the subject matter thereof for possible future rejoinder.

In order to expedite the prosecution of this application, claims 1, 2 and 50 have been amended to more definitely point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 2, 8 and 50 are now in this application.

The Applicant provisionally elects species A in Group I. Species A is amended to include limitations substantially different than the Kim (JP 06107555 A) reference indicated by the Examiner. Claim 2 reads upon the elected species A of claim 1, and wherein claim 2 adds an additional element to cover certain aspects of species A. Claim 8 reads upon species A of claim 1, and since the Examiner makes no mention or restriction of claim 8, the Applicant believes claim 8 to read upon the elected species. Claim 50 reads upon species A of claim 1, and wherein claim 50 further limits the elements of species A.

Additionally, the Applicant would like to point out that commonly owned patent (US 7,078,065), which issued on July 18, 2006, was allowed with similar species that the Examiner has presently restricted. It is therefore believed that withdrawn claims 3-8, 48-54, and 75-80 are linked to a single general inventive concept of claim 1 either directly or through claim dependency. The provisional elected claims 1, 2 and 50 are

related and linked to the withdrawn claims 3-8, 48-54 and 75-80 in that all the groups of invention are directed towards the composition in amended claim 1 and claim 3 which depends upon claim 1. Claims 3-8, 48-54 and 75-80 only adds limitations to the common invention in claim 1, therefore no additional search is required by the Examiner since claim 1 is the parent claim. Therefore the restriction is believed to be in error and reconsideration and withdrawal thereof is requested.

Amended claim 1 includes limitations from claim 50 which are the addition of the following elements "brown rice, job's tear, barley, glutinous rice, perilla japonica, black bean, black sesame, ganoderma lucidum (FR) karst, and rehmannia glutinosa".

Claims 2, 8 and 50 are felt to patentably distinguish over the prior art reference because of their above-mentioned dependency from amended claim 1.

The Applicant requests that the Examiner considers the well established principle that small differences in a crowded art can constitute patentable improvement. See *In re Baum*, 51 USPQ 470 (CCPA 1941) and *In re Lange*, 126 USPQ 365 (CCPA 1960). In considering this principle, the Applicant would also request that the Examiner take note to the court decision which notes that "apparent simplicity has been held to furnish strong argument for patentability where, as here, a need has existed for a structure of the nature disclosed and claimed. The fact that a solution to a problem is simple, or appears to be simple when viewed in retrospect, does not mean that the solution was obvious when it was conceived." See *Ellipse corp. v. Ford Motor Co.*, 171 USPQ 513.

With the above amendments being fully responsive to all outstanding rejections and formal requirements, it is respectfully submitted that the claims are now in condition for allowance, and a notice to that effect is earnestly solicited. Should the Examiner feel that there are further issues which might be resolved by means of telephone interview, the Examiner is cordially invited to telephone the undersigned at 403-444-5695, or by email at davidguerra@verizon.net

A two month extension of time fee of \$225.00 is provided.

Respectfully Submitted,



David A. Guerra, Reg. 46,443

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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On (Date) August 10, 2006 by David A. Guerra

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